IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.873 OF 1996.

The State of Maharashtra & Anr. : Appellants.

versus

M/s.P.G.Bachewar, through its

partners :-

Prabhakar Ganapat Bachewar & ors : Respondents.

Mr.K.K.Tated, AGP, for the State.

None for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 15th March 2005.

ORAL ORDER

1. Heard Mr.Tated, AGP, for the State. Nobody is present for the respondent. This appeal is filed by the State against the judgment and decree passed by the Civil Judge, Senior Division, Panvel dated 30th April 1996 awarding the claim of the respondent/plaintiff to the

extent of Rs.6,27,628=83 with interest at the rate of 18 % per annum from the date of filing of the suit till realisation of the decretal amount.

2. Certain work of construction of road was entrusted to the original plaintiff/respondent by tender and, as per admitted facts, 50% of the work was to be completed and done by the plaintiff before on set of Monsoon and, remaining 50% work was to be completed after the Monsoon was over. The plaintiff admittedly did some work before the Monsoon started. But whatever work the plaintiff has done, i.e. the work of road repairing, was heavily damaged and, the plaintiff, therefore again did the repairing work on that portion of the road. The plaintiff was required to purchase 32 to 40 percent of the material in order to rectify the damaged road and complete the balance work.

3. The trial Court came to the conclusion that even though there was correspondence between the plaintiff and the appellant, the appellant had never agreed for extension of work. It is also the matter of record that whatever work the plaintiff had done before commencement of

Monsoon, the plaintiff was paid for it. But now i.e. by way of present suit, the plaintiff was claiming reimbursement of the work which the plaintiff was required to do to the road which was damaged due to rains.

4. This is, therefore, a case where the plaintiff is seeking double benefit from the defendant/appellant. Firstly, the plaintiff did not complete the work as per specification and, the road got damaged due to heavy rains within a very short period, which clearly shows that the work was not satisfactorily done by the plaintiff. Even then the appellant paid the plaintiff Rs.Six lacs and odd in July 1988. But by filing the suit, the plaintiff is trying to recover from the appellant repair charges which the plaintiff had to incurred because of his substandard work done before on set of the Monsoon.

5. Admittedly, when the plaintiff accepted the work, he knew that specific period of six months was fixed for completion of construction work and 50% of the work was to be done before on set of the monsoon and it was to be done within

one month and, the remaining work was to be done by him after the monsoon was over.

6. However, not only the plaintiff did not complete the work in a proper manner but the appellant never granted any extension of work and to the contrary the appellant informed him by their letter dated 15.11.1988 to rescind the work. It is, therefore, clear that there was no permission granted to the plaintiff to complete the 50% work which he was to do after the Monsoon was over. It is also clear that whatever work the plaintiff had done within one month before commencement of the monsoon was totally defective because in the very next rainy season the road was heavily damaged. Therefore, because of the defective work done by the plaintiff, he was required to bear certain expenses and he could not have claimed them from the appellant. But by granting decree in favour of the plaintiff, the trial Court granted bonus to the plaintiff, even though, from the admitted facts, the plaintiff's work was of substandard and sub-quality and, extensive damage to the road on account of the monsoon is the proof thereof. This is, therefore, a case where the trial Court without

understanding the issue involved awarded decree to which the plaintiff was not entitled . Hence I pass the following order :-

:ORDER:

Appeal is allowed.

The judgment and decree of the trial Court is set aside. The suit of the plaintiff is dismissed.

However, since nobody is present for the respondents/plaintiff, no order as to costs.

[D.G.DESHPANDE]

15/03/2005 JUDGE.